

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ADDIE T. JACKSON and U.S. POSTAL SERVICE,
POST OFFICE, Atlanta, GA

*Docket No. 02-2288; Submitted on the Record;
Issued January 29, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits.

Appellant, a 48-year-old human resources specialist, injured her left leg, neck and lower back on January 21, 1993 when she slipped and fell while walking down a hallway. She filed a claim for benefits, which the Office accepted for contusions to the lumbar and cervical spines, aggravation of osteoarthritis and aggravation of spondylosis. The Office paid appropriate compensation for temporary total disability, until January 29, 1998, when she returned to part-time work on light duty.

In a report dated April 23, 1999, Dr. Linzy Scott, a Board-certified orthopedic surgeon and appellant's treating physician, indicated that appellant's conditions were progressively worsening and would continue to degenerate and could eventually force her to retire.

In a report received by the Office on May 6, 1999, Dr. Scott stated that appellant's restrictions remained and that there had been no improvement in her conditions, which were in fact worsening. He advised that appellant was currently incapable of working an eight-hour day, that she remained disabled and that there was no way a person with two bad hips, such as appellant, could be considered normal.

In order to determine whether appellant continued to suffer residuals from her accepted employment-related conditions, the Office referred appellant for a second opinion examination with Dr. Harold H. Alexander, a Board-certified orthopedic surgeon. In a report dated August 27, 1999, he stated:

"On the basis of the present findings, it would appear that [appellant] has chronic cervical and lumbosacral degenerative arthritis with chronic cervical lumbosacral strain. These findings are not caused by the fall. They are only temporarily aggravated and have long since subsided.... [Appellant] is qualified to work in a

light-duty capacity, which would require occasional standing, walking, occasional lifting and primarily a sitting type of work. She could work a full week providing it is in a sedentary light-duty capacity.”

The Office determined that there was a conflict in the medical evidence and referred appellant to Dr. Ned B. Armstrong, a Board-certified orthopedic surgery, for an impartial medical examination to resolve the conflict.

In a report dated June 13, 2000, Dr. Armstrong, after reviewing the medical records and the statement of accepted facts and stating findings on examination, found that appellant sustained temporary aggravations of her preexisting conditions of osteoarthritis and spondylosis, but that she did not sustain any continuing impairment beyond the period of aggravation. He advised that appellant’s subjective complaints were disproportionate to the objective findings, with no evidence of herniated disc. Dr. Armstrong concluded that there was no further impairment causally related to the January 21, 1993 work injury from appellant’s lumbar and buttock strain, temporary aggravation of the preexisting degenerative arthritis of the lumbar spine, spondylolisthesis L4-5 and hip aseptic necrosis.

In a letter of proposed termination dated August 10, 2000, the Office found that Dr. Armstrong’s opinion finding that appellant’s 1993 work injury had resolved and that she no longer was disabled represented the weight of the medical evidence.

By decision dated October 31, 2000, the Office terminated appellant’s compensation, finding that Dr. Armstrong’s opinion represented the weight of the medical evidence.

By letter dated November 10, 2000, appellant requested an oral hearing, which was held on March 27, 2001. She submitted an August 31, 2000 report from Dr. Scott in which he essentially restated his previous findings and conclusions.

By decision dated June 18, 2001, an Office hearing representative affirmed the October 31, 2000 termination decision.

By letters dated February 5 and April 16, 2002, appellant requested reconsideration. She submitted reports from Dr. Clifford W. Roberson, a specialist in orthopedic surgery, dated September 17, 2001 and February 6, 2002.

In the September 17, 2001 report, Dr. Roberson made findings and conclusions on examination and reaffirmed appellant’s symptoms and conditions. In his February 6, 2002 report, he opined that appellant’s condition was being severely aggravated by her having to drive a long, three-hour distance to the workplace and he, therefore, recommended that she be relocated to a worksite where she could avoid the severe aggravation of her neck and lower back conditions caused by such long drives. Dr. Roberson also recommended that she avoid repetitive bending, stooping, heavy lifting and long periods of standing and walking. He concluded that appellant has a chronic, permanent condition and he did not anticipate that her symptoms would resolve at all. Dr. Roberson stated that the condition was most definitely related to the previous work-related injury, that it was an ongoing condition and would probably continue to get progressively worse.

By decision dated August 13, 2002, the Office denied reconsideration.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.²

In this case, the Office based its decision to terminate appellant's compensation on the June 13, 2000 report of Dr. Armstrong, the independent medical examiner. He stated that, although appellant sustained temporary aggravations of her preexisting accepted conditions of degenerative osteoarthritis of the lumbar spine, spondylolisthesis L4-5 and hip aseptic necrosis, these aggravations had long since resolved and she no longer had any impairment related to them. Dr. Armstrong concluded that appellant had no further impairment of any kind causally related to the January 21, 1993 work injury. The Office relied on his opinion in its October 31, 2000 termination decision, finding that all residual disability stemming from her accepted lumbar strain had ceased and that appellant currently suffered from no condition or disability causally related to her accepted 1993 employment injury.

The Board holds that the Office properly found that Dr. Armstrong's referee opinion negating a causal relationship between appellant's claimed current condition and disability and her accepted lumbar-strain injury and that she no longer had any residuals from her employment injuries was sufficiently probative, rationalized and based upon a proper factual background and that, therefore, the Office acted correctly in according his opinion the special weight of an independent medical examiner.³ Accordingly, the Board finds that Dr. Armstrong's opinion constituted sufficient medical rationale to support the Office's October 31, 2000 decision terminating appellant's compensation. The Board, therefore, affirms the Office's October 31, 2000 Office decision terminating compensation.

Following the Office's termination of compensation, the burden of proof in this case shifted to appellant, who requested a hearing and submitted Dr. Scott's August 31, 2000 report. This report, however, did not contain countervailing, probative medical evidence that appellant continued to have residual disability from her accepted conditions. Dr. Scott merely provided a summary of his earlier reports, which documented his treatment of appellant's various conditions and reiterated his previous findings and conclusions. Thus, his report constituted no more than a restatement of one side of the conflict, which was resolved by Dr. Armstrong. Accordingly, Dr. Scott's report did not satisfy appellant's burden of proof to submit medical evidence sufficient to warrant modification of the Office's October 31, 2000 termination decision, which

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

³ *Gary R. Seiber*, 46 ECAB 215 (1994).

properly found that Dr. Armstrong's referee opinion constituted the weight of the medical evidence. Dr. Scott's additional report is, therefore, insufficient to overcome the special weight accorded to the impartial medical specialist report or to create a new conflict.⁴ Lastly, appellant submitted Dr. Roberson's reports with her request for reconsideration. He merely stated findings on examination, reiterated the long-standing diagnoses of appellant's conditions and stated in summary fashion that these conditions were related to appellant's 1993 employment injury. Thus, his opinion is insufficient to override the prevailing weight of the medical evidence, represented by Dr. Armstrong's referee opinion, that appellant's accepted conditions have resolved and that she has no residual disability stemming from the accepted 1993 employment injury. Accordingly, the Board affirms the Office's June 18, 2001 decision affirming the October 31, 2000 termination decision and the August 13, 2002 decision denying reconsideration.

The decisions of the Office of Workers' Compensation Programs dated August 13, 2002 and June 18, 2001 are hereby affirmed.

Dated, Washington, DC
January 29, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

⁴ *Virginia Davis-Banks*, 44 ECAB 389 (1993).